

**UNITED STATES DEPARTMENT OF AGRICULTURE**

Farm Service Agency  
Washington, DC 20250

**Notice PM-2104**

**For:** State Offices

**Notifying Employees Whose Retirement Coverage  
May Be Affected by the Court Decision *Conner v. OPM***

**Approved by:** Acting Deputy Administrator, Management



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**1 Overview**

**A**

**Background**

Benefits Administration Letter (BAL) 97-107 advised agency personnel offices of the decision of the U.S. Court of Appeals for the Federal Circuit in *Conner v. OPM*. This decision affects certain employees who were automatically placed in the Federal Employees Retirement System (FERS).

**B**

**Purpose**

This notice:

- ensures that all affected employees are made aware of the *Conner* decision and receive equal consideration
- provides detailed instructions on:
  - identifying employees affected by *Conner v. OPM*
  - notifying affected employees
  - correcting employee records
  - reporting requirements.

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**Disposal Date**

September 1, 1999

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**Distribution**

State Offices; State Offices relay to applicable  
County Offices

## 1 Overview (Continued)

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### C

#### Website/Bulletin Board

The following can be found at OPM's website at [www.opm.gov](http://www.opm.gov):

- BAL 98-114, Notifying Employees Who May Be Affected by the Decision of the Court in the Case of *Conner v. OPM*

**Note:** BAL 98-114 has also been loaded to BBS in the HRINFO Library.

- the CSRS and FERS Handbook for Personnel and Payroll Offices.
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### D

#### State Office Reporting Requirements

State Offices shall submit *Conner* Case Reports (PE 173-R) to the National Office monthly. Include the following in the reports:

- identification method used

**Example:** General employee notice, Official Personnel Folder (OPF) review, etc.

- total number of:
  - *Conner* cases identified
  - cases in which County Office employees elected deemed FERS
  - cases in which County Office employees elected CSRS Offset
  - cases in which County Office employees elected Federal Insurance Contributions Act (FICA) only.

Forward completed PE 173-R's by FAX or to the following address by COB on the 15<sup>th</sup> of each month:

USDA FSA HRD PMBAB  
STOP 0595  
1400 INDEPENDENCE AVENUE SW  
WASHINGTON DC 20250-0595

FAX 202-418-9129.

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## 1 Overview (Continued)

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### E

#### Contacts

If there are questions about this notice, contact 1 of the following:

- Susan Brown at 202-418-9039
  - Darla Hensley at 202-418-9021.
  - TDD at 202-418-9116.
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## 2 Identifying and Notifying Affected Employees

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### A

#### Prior 5-Year Test

If an employee had a break in service of more than 3 days ending after 1986, the employee met the 5-year test **only** if he or she had past coverage under the CSRS and also had 5 years of creditable civilian service as of the break. It did **not** matter how much service the employee had as of December 31, 1986.

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### B

#### What the New Law States

The decision of the U.S. Court of Appeals for the Federal Circuit in the case of *Connor v. OPM* invalidated OPM's regulation that interpreted the 5-year test for employees who returned to work after 1986 following a break in service. The court's ruling applies only in cases in which employees were placed in automatic FERS coverage, not those who elected to join FERS.

As a result of the *Conner* case, an employee who returns to work after a break in service can meet the 5-year test if he or she had 5 years of creditable civilian service as of December 31, 1986, even if they were never covered under the CSRS or FERS. If an employee satisfies the 5-year test, he or she is not automatically covered by FERS, even though he or she may elect FERS coverage.

Since the new 5-year test applies to all retirement coverage determinations made on or after January 1, 1987, any employee who was automatically placed in FERS, despite having completed 5 years of creditable civilian service before 1987, was placed in the wrong retirement system.

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### C

#### Election Deadline

State Offices shall ensure that County Office employee elections are made **by June 15, 1999**.

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## 2 Identifying and Notifying Affected Employees (Continued)

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### D Identifying Affected Employees

State Offices:

- shall take action to identify affected County Office employees
- have discretion to determine the most effective means of identifying employees in their State

**Note:** A number of agencies have used general employee notices in the form of bulletins, newsletter articles, earnings statement messages, and employee memorandums, while other agencies have chosen to use automated personnel reports or OPF audits to identify employees.

- may want to consider using more than 1 method to identify employees, because it increases the probability that potentially all affected employees will be informed.

Exhibit 1 contains a Retirement Plan Codes Decision Tree for use in determining an employee's correct retirement system.

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### E Notifying Affected Employees

State Offices shall:

- notify all affected County Office employees
- advise them of their options.

Once employees have been notified, some will request information. It is critical that employees receive complete information. Making an informed election of retirement coverage is a decision of great importance to employees.

Offices should ensure that employees are fully informed concerning the impact their decisions will have on their future benefits. Exhibits 2 and 3:

- include sample letters that explain necessary actions
- highlight key areas of concern to affected employees.

Every effort should be made to provide employees with this clear and concise information regarding their status and options.

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## Notice PM-2104

### 2 Identifying and Notifying Affected Employees (Continued)

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E

**Notifying  
Affected  
Employees  
(Continued)**

Offices shall take the following action when notifying affected employees.

Step	Action
1	<p>Notify the employee of the retirement coverage error. Use the sample letter in either Exhibit 2 or 3. Include appropriate Thrift Saving Plan (TSP) information according to paragraph 4 of this notice.</p> <p><b>Note:</b> Modify the sample letter for each employee.</p>
2	<p>Give the employee a copy of the FERS Transfer Handbook and SF-3109, or the sample letter in Exhibit 2 or 3 to document the election.</p>
3	<p>Calculate either of the following:</p> <ul style="list-style-type: none"><li>• annuity projections for employees as of their earliest entitlement dates to help them compare CSRS Offset and FERS benefits</li><li>• projections for employees who are choosing between Social Security-only coverage and FERS.</li></ul> <p><b>Note:</b> Do <b>not</b> use the FERS Transfer Model. It will not let you enter retroactive FERS transfer dates.</p>
4	<p>Give the employee 60 calendar days from date of notice to make an election.</p>
5	<p>Identify the counselor, preferably at a local level, who will be correcting the retirement coverage and the TSP account. The counselor must be able to:</p> <ul style="list-style-type: none"><li>• answer the employee's questions</li><li>• discuss the impact of correcting retirement coverage and its effect on future retirement benefits</li><li>• explain the payroll office process and keep the employee abreast of any changes to his or her account.</li></ul> <p>If the counselor <b>cannot</b> answer questions about the payroll changes, identify a contact person in payroll who can answer those questions. It is the Agency's responsibility to counsel the employee about the consequences of his or her election.</p>
6	<p>Seek assistance, if necessary, from HRD or SSA.</p>

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## Notice PM-2104

### 2 Identifying and Notifying Affected Employees (Continued)

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#### F

##### Employee Options

If you determine that the employee is in the wrong retirement system as a result of the *Conner v. OPM* decision, apply the deemed FERS regulations in 5 CFR 846.204(b)(1).

Affected employees may choose 1 of the following options:

- a retroactive correction of retirement coverage to the appropriate retirement coverage
  - to be deemed to have elected FERS. For additional information, see the CSRS and FERS Handbook for Personnel and Payroll Offices, Part 11A6.
- 

#### G

##### Deposit Service

Offices shall refer to the following table to determine the effect of the *Conner* decision on employee deposit service.

IF...	THEN...
while under FERS, the employee made a deposit under FERS rules for military service or for the nondeduction civilian service performed before erroneous coverage began	<ul style="list-style-type: none"><li>• the amount due for the deposit must be recomputed under CSRS rules. It should be computed under CSRS rules since both the military and civilian service will either be part of a CSRS component of a FERS benefit, if the employee elects to remain in FERS, or will be included in the computation of a CSRS Offset annuity, if the employee elects CSRS Offset.</li><li>• the employee must be informed of the corrected amounts due, and of his or her entitlement to receive repayment of amounts already paid.</li></ul>
the coverage error was directly caused by an erroneous OPM regulation and an employee has made service credit deposits based on information that is now erroneous	OPM will waive a portion of the interest that normally accrues on the service credit deposit for employees who elect to remain in FERS.
employees who have fully completed payment of a deposit and elect to remain in FERS	no interest will be assessed on the additional principal now owed.
employee has made partial payment of a deposit and elects to remain in FERS	interest on the additional principal amount will be assessed prospectively.

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## 2 Identifying and Notifying Affected Employees (Continued)

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### G

#### Deposit Service (Continued)

Interest will fully accrue on unpaid deposit service and if the employee elects CSRS Offset coverage. These interest rules:

- apply **only** in cases where the FERS coverage is wrong as a result of the *Conner* decision where the court ruled that OPM's regulations implementing the 5-year test were incorrect
  - do **not** apply to other FERS elections where an employee can elect to remain in FERS because his or her Agency erroneously placed the employee under FERS.
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## 3 Processing *Conner* Cases

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### A

#### Affected Employee Correction Options

Refer to the following table for affected employee correction options.

IF the employee...	THEN the employee...
is in a permanent position	must choose between CSRS Offset coverage and FERS.
is in a nonpermanent position that is excluded from CSRS but not from FERS  <b>Example:</b> Term appointments, excepted indefinite appointments, or overseas limited appointments.	must choose between Social Security-only coverage and FERS.
was erroneously placed in FERS while in a CSRS-excluded position but was later converted to a permanent position	must choose between Social Security-only coverage and FERS on the date of the erroneous coverage.  <b>Note:</b> Since these employees currently have permanent positions, if they choose to have the retirement coverage corrected to Social Security only, that coverage becomes CSRS Offset effective on the date of the permanent appointments. The employees would <b>not</b> have a second opportunity to elect FERS coverage on the dates of their conversions to permanent positions because there was no break in service.

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## Notice PM-2104

### 3 Processing *Conner* Cases (Continued)

#### B

##### Correcting Records

Refer to the following table for correcting records when an employee elects to remain in CSRS Offset or Social Security-only coverage.

IF employee is a...	THEN...
GS	process corrections according to the Payroll/Personnel Manual, Chapter 11.
CO	<ul style="list-style-type: none"> <li>prepare a correction action according to processing instructions in 28-PM</li> </ul> <p><b>Note:</b> Use retirement code "C" for CSRS Offset.</p> <ul style="list-style-type: none"> <li>notify KCMO, FAD, AEARB of TSP corrections according to subparagraph 4 C of this notice</li> <li>process payment corrections according to 115-FI (Rev. 4).</li> </ul> <p><b>Note:</b> Contact Debbie Barker at 703-305-1309 with questions regarding payment corrections.</p>

#### C

##### Processing a Deemed FERS Case

Any employee who was automatically placed in FERS, and now, because of the *Conner* decision, the retirement coverage is wrong, falls under the deemed FERS election regulations. Under those regulations, unless the employee elects in writing to have the coverage corrected retroactively, he or she will be deemed to have elected FERS.

Offices shall follow these steps in processing a deemed FERS case.

Step	Action
1	Review the case and make a determination that it qualifies as a deemed FERS case.
2	Notify the employee according to subparagraph 2 E.
3	<p>If the employee <b>elects</b> deemed FERS, the <b>State Office</b> shall submit a copy of the notification letter, with the employee's written election, for review and concurrence to:</p> <p style="text-align: center;">USDA HRD PMBAB STOP 0595 1400 INDEPENDENCE AVE SW WASHINGTON DC 20250-0595.</p> <p>If the employee <b>does not elect</b> deemed FERS, correct retirement coverage as appropriate.</p>
4	HRD, PMBAB shall submit to the Department for approval.
5	If approved, HRD, PMBAB shall notify the State Office of appropriate action.

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### 3 Processing *Conner* Cases (Continued)

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#### D

#### Erroneous FERS Coverage

Some employees may have more than 1 period of service following the erroneous FERS coverage. If employees would have had opportunities to transfer to FERS during the subsequent period of service, they can choose during which period of service a deemed FERS election would become effective.

**Example:** An employee was placed in FERS during her term appointment on January 6, 1989. (Although she had 8 years of prior service, she had no prior retirement coverage.) The term appointment ended on January 5, 1993. She had a 9-month temporary appointment with Social Security-only coverage in 1994. On July 5, 1996, she received a career-conditional appointment and was again placed in FERS.

As a result of *Conner*, her FERS coverage on January 6, 1989, and later on July 5, 1996, was erroneous because she had more than 5 years of creditable civilian service before 1987. She should have had only Social Security coverage on January 6, 1989, and been given a 6-month election opportunity to transfer to FERS.

Under the deemed FERS regulations, she can elect to remain in FERS or have her retirement coverage corrected to Social Security-only on January 6, 1989. If she chooses to have her coverage corrected to Social Security for that period of service, she will then have to choose whether she wants to remain in FERS on July 5, 1996, or have her coverage corrected to CSRS Offset.

Regardless of which option she chooses, her service before July 5, 1996, will be credited under CSRS rules. That means that she can pay a CSRS deposit for both the 4-year term appointment and 9-month temporary appointment to have the service used in computing her retirement benefit even though both were after 1988. Under CSRS rules, no deposit is necessary for the service to count toward eligibility for retirement.

If, instead, she chooses to be deemed to have elected FERS on January 6, 1989, her 9 months of temporary service in 1994 falls under the rules for FERS. Therefore, the service is not creditable because it was performed after 1988. Her FERS coverage resumes on July 5, 1996.

The employee was automatically placed in FERS twice when she should have been given the opportunity to elect FERS. Therefore, if she wants FERS coverage, she can choose on which of those 2 appointments she wants her FERS coverage to begin.

4 TSP

**A**

**Not Electing  
Deemed FERS  
Coverage**

If employee chooses not to be deemed to have elected FERS coverage, then any contributions to TSP in excess of 5 percent, as well as any Agency matching and automatic 1 percent contributions, must be backed out of the employee's account according to the regulations of the Federal Retirement Thrift Investment Board.

**B**

**Electing Deemed  
FERS Coverage**

Affected employees' TSP accounts will be affected as described in the following table should they elect deemed FERS.

Correction Issue	Action
Opportunity to Make Up Employee Contributions	An employee who elects deemed FERS coverage should have become eligible to participate in TSP with the effective date of the FERS election. Consequently, the employee should be given the opportunity to make up employee contributions missed during the period beginning with the effective date of the deemed FERS coverage to the date the employee actually became eligible to participate in TSP, that is, the first day of the pay period that the employee began receiving Agency automatic (1 percent) contributions. See 5 CFR 1605.2.
Adjustments to Agency Automatic (1 Percent) Contributions	Agency computes and reports to the TSP recordkeeper the amount of Agency automatic (1 percent) contributions missed during the period described above. Agency must also submit lost earnings records for these retroactive Agency contributions. See 5 CFR 1605.2.
Adjustments to Agency Matching Contributions	If the employee makes up missed contributions, the Agency must compute and report to the TSP recordkeeper the associated matching contributions. Agency must also submit lost earnings records for these retroactive Agency contributions. See 5 CFR 1605.2.
Notice to Employees	Advise employees regarding their opportunities to make up missed employee contributions and of the entitlement to retroactive Agency contributions.
Written Explanation of Adjustments	Provide employees with written explanations of any adjustments made in their TSP account.

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**4 TSP (Continued)**

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**C**

**Electing CSRS  
Offset**

Refer to the following table for the effects on the employees' TSP accounts should they elect to have their retirement coverage corrected to CSRS Offset.

<b>Correction Issue</b>	<b>Action</b>
Adjustments to Employee Contributions	The Agency must submit negative adjustment records to the TSP recordkeeper to remove excess employee contributions. The Agency must refund these contributions to the employee, and these contributions are taxable as ordinary income for the year in which they are refunded. Earnings on the excess contributions will remain in the employee's account. See 5 CFR 1605.3.
Adjustments to Agency Contributions	All Agency contributions and attributable earnings will be removed from the employee's account. Agency should submit negative adjustment records to retrieve those Agency contributions that have been in the account for less than 1 year. Other Agency contributions and attributable earnings will be forfeited to TSP and used to offset administrative expenses. See 5 CFR 1605.3.
Notice to Employees	Advise the employees of ramifications to the TSP accounts.
Written Explanation of Adjustments	Provide employees with written explanation of the adjustments made in their TSP accounts.

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**Notice PM-2104**

**4 TSP (Continued)**

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**D**

**Electing Social Security Only**

Refer to the following table for the effects on the employees' TSP accounts should they elect to have their retirement coverage corrected to Social Security only.

<b>Correction Issue</b>	<b>Action</b>
Adjustments to Employee Contributions	<p>The Agency must submit negative adjustment records to the TSP recordkeeper to remove all employee contributions. The Agency must refund these contributions to the employee, and these contributions are taxable as ordinary income for the year in which they are refunded. See 5 CFR 1605.3.</p> <p>TSP will pay the earnings attributable to employee contributions directly to the employee. These earnings are also taxable as ordinary income for the year in which they are paid. See 5 CFR 1605.9.</p>
Adjustments to Agency Contributions	<p>All Agency contributions and attributable earnings will be removed from employees' accounts. Agency should submit negative adjustment records to retrieve those Agency contributions that have been in the account for less than 1 year. Other Agency contributions and attributable earnings will be forfeited to TSP and used to offset administrative expenses. See 5 CFR 1605.3.</p>
Notice to Employees	<p>Advise employees of ramifications to TSP account and tax consequences, that is, amounts received from the Agency and TSP are taxable as ordinary income.</p>
Written Explanation of Adjustments	<p>Provide employees with written explanations of the adjustments made in their TSP accounts.</p>

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## Notice PM-2104

### 4 TSP (Continued)

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#### E

#### Correction Procedures for County Office Employees

Follow the payment correction procedures in 115-FI (Rev. 4) for County Office employees. The following table provides the TSP payment corrections required.

IF the employee...	THEN, on Screen NCB35104, ENTER...
is deemed FERS, and elects to make up employee contributions	<ul style="list-style-type: none"><li>• "3" as the TSP eligibility code</li><li>• "Y" as the TSP status code</li><li>• the TSP distribution as elected by the employee.</li></ul> <p><b>Note:</b> The Agency contribution and lost earnings will automatically be generated by KCMO.</p>
is deemed FERS, and elects <b>not</b> to make up employee contributions	<ul style="list-style-type: none"><li>• "3" as the TSP eligibility code</li><li>• "E" as the TSP status code.</li></ul> <p><b>Note:</b> The Agency contribution and lost earnings will automatically be generated by KCMO.</p>
elects CSRS Offset	<ul style="list-style-type: none"><li>• "C" as the retirement code</li><li>• reduced TSP contribution, if any.</li></ul> <p><b>Note:</b> Excess contributions will appear as a pending adjustment. After completing all corrections, modify the pending adjustment file to zero, and issue a payment to the employee using transaction code "OEP".</p>
elects Social Security only	<ul style="list-style-type: none"><li>• "2" as the retirement code</li><li>• "6" as the TSP eligibility code</li><li>• "I" as the TSP status code</li><li>• field exit through the TSP distribution.</li></ul> <p><b>Note:</b> Excess contributions will appear as a pending adjustment. After completing all corrections, modify the pending adjustment file to zero, and issue a payment to the employee using transaction code "OEP".</p>

**Notes:** For corrections before payroll automation in June 1994, CCC-184-2's must be submitted to restore the record to history, and to correct the record.

Contact Debbie Barker, FMD, at 703-305-1309, with questions regarding correcting TSP accounts.

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## RETIREMENT PLAN CODES DECISION TREE



**Sample Letter to Employee Who Was Erroneously Placed in FERS Rather Than CSRS Offset**

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Dear \_\_\_\_\_:

In the recent court decision, *Conner v. OPM*, the method of determining retirement coverage for certain employees automatically placed in the Federal Employees Retirement System (FERS) was changed. After a careful review of your employment history, we have determined that you are in the wrong retirement system. You must now decide whether you want to remain in your current retirement system or have your retirement coverage corrected to Civil Service Retirement System (CSRS) coverage as a CSRS Offset employee.

You have 60 calendar days from the date of this notice to decide whether you want to remain in FERS or have your coverage retroactively corrected to CSRS Offset coverage. If you make no election, you will be deemed to have elected FERS.

Both CSRS Offset and FERS are good retirement plans with advantages and disadvantages. Social Security is a part of both, so your coverage continues with either plan. Either way, your decision deserves careful thought.

The enclosed FERS Transfer Handbook will help you choose. It contains an overview of both retirement systems, discusses the differences between FERS and CSRS, and provides examples. Please read it carefully before making your decision.

Although the FERS Transfer Handbook provides a good comparison of CSRS and FERS, it was written for employees who are in the proper retirement system. There are a few things we want to point out before you make your decision. The enclosure, "Considerations in Choosing Between CSRS Offset and FERS Coverage," explains how the coverage error occurred. It also discusses how your decision will affect your benefits and provides additional information that should help you choose. All of the information in the enclosure applies to you, so consider the information carefully before making a choice.

We can help, too. We can provide projections of your retirement benefits under both FERS and CSRS Offset. We can also project your Social Security and, based on assumed rates of return and future contributions, Thrift Savings Plan benefits, so you can compare your total benefits under both plans.

We have included a copy of SF-3109, Election of Coverage, with the FERS Transfer Handbook. Please sign Part 1 of SF-3109. Your signature verifies that you received SF-3109 and the FERS Transfer Handbook. It is not an election of retirement coverage. If you decide that you want to remain in FERS, complete Part 2 of SF-3109 and return it to your Human Resources Office.

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**Sample Letter to Employee Who Was Erroneously Placed in FERS Rather Than CSRS Offset  
(Continued)**

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Remember that if you choose to remain in FERS, you **cannot** change your mind later, so you want to choose carefully.

We realize this error may cause you some concern, and we regret that. We want to make this as easy for you as we can. [Joan Smith], your Benefits Officer, extension 1234, will be able to counsel you about Social Security, FERS, and CSRS Offset benefits, calculate benefits projections, and explain your potential benefits.

Please acknowledge receipt of this notice by returning a signed and dated copy of this letter, along with Part 1 of SF-3109.

Enclosure

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Signature

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Date

**Note: To Agency Representatives:** You need to be able to document that you notified the employee of the coverage error and his or her options. Having the employee sign the receipt copy of the letter and SF-3109 is one way to accomplish this. However, you may use any method that accomplishes the purpose. See the CSRS and FERS Handbook for Personnel and Payroll Offices, Chapter 11, Section 11A6.1-1D, for more information about the documentation requirement.

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**Sample Letter to Employee Who Was Erroneously Placed in FERS Rather Than CSRS Offset  
(Continued)**

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**Considerations in Choosing Between CSRS Offset  
and FERS Coverage****How the Coverage Error Occurred**

This coverage error is the result of a recent decision of the U.S. Court of Appeals for the Federal Circuit in the case of *Conner v. U.S. Office of Personnel Management (OPM)*. The court ruled that OPM's regulations that tell agencies how to apply the 5-year test were incorrect. The 5-year test is used to determine whether an employee who is subject to Social Security is automatically covered by FERS. If an employee satisfies the 5-year test, he or she is not automatically covered by FERS, even though the employee may elect FERS coverage.

Because of the ruling in *Conner*, a new rule now applies. It states that an employee who performed 5 years of creditable civilian service before January 1, 1987, is excluded from automatic FERS coverage. This new rule revises the 5-year test. The revised 5-year test applies to all retirement coverage determinations made on or after January 1, 1987. It affects you because you had more than 5 years of civilian service before 1987.

Below is a summary of your employment history.

On \_\_\_\_\_ when you received a career-conditional appointment with us, we placed you in FERS. Based on the revised 5-year test, that retirement coverage is now wrong. You should have been placed under CSRS Offset coverage with the right to elect FERS.

**CSRS Offset Benefits**

Although your Social Security benefits will be the same under both systems, the amount of your Social Security benefit will affect a CSRS Offset annuity. (When CSRS Offset employees retire, their annuities are computed under the same rules that apply to other CSRS retirees. However, when they become eligible for Social Security benefits, their annuities will be reduced, or offset, by the value of the Social Security benefit earned during CSRS Offset service.)

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**Sample Letter to Employee Who Was Erroneously Placed in FERS Rather Than CSRS Offset (Continued)**

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If you have a record of your Social Security earnings or an estimate of your Social Security benefits from the Social Security Administration, we can provide a more realistic projection of your CSRS Offset benefit when you become eligible for Social Security. If you don't already have that information, you can request a Personalized Earnings and Benefit Estimate Statement from the Social Security Administration by calling 1-800-772-1213 or by accessing the Social Security website at [www.ssa.gov](http://www.ssa.gov).

**Correction of Your Records**

If you elect to have your records corrected to CSRS Offset coverage, that coverage will be made retroactive to \_\_\_\_\_. If you remain in FERS, the effective date of your FERS coverage will not change, but your SF-50 showing your career-conditional appointment will be corrected to show that you elected FERS coverage effective \_\_\_\_\_, rather than being automatically placed in FERS on that date. This changes how your service, performed before \_\_\_\_\_, is treated.

The amount withheld from your salary for Social Security and retirement is the same under FERS and CSRS Offset. However, if you choose to have your records corrected to CSRS Offset, the retirement money will have to be moved from your FERS account to a new CSRS account. The payroll office would take care of that.

**Service Credited Under CSRS Rules Even If You Remain Under FERS**

Whether you remain in FERS or elect to have your coverage corrected to CSRS Offset, your civilian service, before \_\_\_\_\_, is credited under CSRS rules. The "Service Credit Deposits and Refunds" section in the FERS Transfer Handbook explains how civilian service is credited under CSRS when no retirement deductions were withheld from your salary. Your service before October 1, 1982, is treated differently from your service on and after October 1, 1982. All of the service counts in deciding whether you have enough service to be eligible to retire, but the service on and after October 1, 1982, can be used to compute your retirement benefit only if you pay a deposit for the service. The service before October 1, 1982, is used to compute your retirement benefit even if a deposit is not paid for the service, but your annuity is reduced because the deposit is not paid.

The deposit under CSRS is 7 percent of your earnings during the period when no deductions were withheld, plus interest. That's different from a FERS deposit which is 1.3 percent of your earnings. If you already paid a FERS deposit for the service, let us know. You will owe additional money. We will contact OPM so they can compute a CSRS deposit and give you credit for the deposit amount already paid. You also can choose to have the money you already paid returned to you.

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**Sample Letter to Employee Who Was Erroneously Placed in FERS Rather Than CSRS Offset (Continued)**

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**Social Security Benefits Are Not Affected by Your Decision**

The FERS Transfer Handbook discusses the Government Pension Offset and Windfall Elimination Formula. Both can affect the amount of Social Security benefits payable to certain Federal employees. The Government Pension Offset affects a spouse's share of a worker's Social Security benefit while the worker is living and the survivor benefit after the worker dies. If you expect to be eligible for spouse and survivor benefits from Social Security based on your husband's Social Security earnings, we want you to know that you do not need to consider the Government Pension Offset when making your decision. Because you are automatically covered by Social Security, neither the Social Security spouse benefit nor the survivor benefit will be subject to the Government Pension Offset whether you choose CSRS Offset or FERS coverage.

If you have always had Social Security deducted from your pay during your employment both inside and outside of the government, your Social Security benefit will not be subject to the Windfall Elimination Formula. This is true whether you elect CSRS Offset or FERS coverage.

**Effect on Your Thrift Account**

You have been contributing 10 percent of your pay to your Thrift Savings Plan (TSP) account and receiving Agency automatic (1 percent) and Agency matching contributions. You became eligible to participate in the TSP on \_\_\_\_\_. However, as a FERS transfer employee, you would have become eligible to participate in the TSP on \_\_\_\_\_ [insert effective date of deemed FERS election]. Consequently, if you elect to remain in FERS, you are entitled to retroactive Agency automatic (1 percent) contributions for the period April 1, 1990, [insert effective date of deemed FERS election] to [insert date employee became eligible to participate in the TSP]. You will also have the opportunity to make up employee contributions missed during this period. If you make up employee contributions, you will receive associated retroactive Agency matching contributions. In addition, you are entitled to lost earnings on both missed employee contributions and the retroactive Agency contributions that are made to your account.

If you choose CSRS Offset coverage, you are not entitled to the Agency contributions and attributable earnings to your account, and they will be removed from your account. Also, we will ask the TSP to remove the excess employee contributions from your account (that is, employee contributions that exceed the CSRS five percent limit), and we will refund these excess employee contributions to you. In addition, you may request a refund of the remainder of the employee

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**Sample Letter to Employee Who Was Erroneously Placed in FERS Rather Than CSRS Offset  
(Continued)**

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contributions in your TSP account, and if you do so, we will also ask the TSP to remove these contributions and refund them to you. All the employee contributions that are refunded to you will be taxable as ordinary income for the year in which they are refunded. The earnings attributable to your refunded employee contributions will remain in your TSP account.

**Note:** Your latest TSP Participant Statement will show the total amount of employee contributions and attributable earnings, Agency automatic (1 percent) contributions and attributable earnings, and Agency matching contributions and attributable earnings in the TSP account.

**Note: To Agency Representatives:** If the employee requests updated amounts, please call the Federal Retirement Thrift Investment Board. Only the Agency payroll office, however, can determine the amount of the excess employee contributions it deposited in the employee's account. For more information about correcting TSP accounts, see the TSP error correction regulations at 5 CFR Part 1605 and the lost earnings regulations at 5 CFR Part 1606.

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**Sample Letter to Employee Who Was Erroneously Placed in FERS Rather Than Social Security Only**

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Dear \_\_\_\_\_:

In the recent court decision, *Conner v. OPM*, the method of determining retirement coverage for certain employees automatically placed in the Federal Employees Retirement System (FERS) was changed. After careful review of your employment history, we have determined that you are in the wrong retirement system. You must now decide whether you want to remain where you are or have your retirement coverage corrected to Social Security only.

You have 60 calendar days from the date of this notice to decide whether you want to remain in FERS or have your coverage retroactively corrected to Social Security only. If you make no election, you will be deemed to have elected FERS. The following information may help you decide.

Your term appointment is excluded from coverage under the old Civil Service Retirement System (CSRS). If you choose to have your records corrected, you will only have Social Security coverage. But, if you later get a permanent appointment, you will be covered by both CSRS and Social Security as a CSRS Offset employee. When CSRS Offset employees retire, their annuities are computed under the same rules that apply to other CSRS retirees. However, when they become eligible for Social Security benefits, their annuities will be reduced, or offset, by the value of the Social Security benefit earned during CSRS Offset service.

So, your choice isn't just between FERS coverage and no retirement coverage, other than Social Security. You must also look at your future career expectations. You must decide whether to keep the FERS coverage you currently have or give it up with the expectation you will receive a permanent appointment in the future that would give you CSRS Offset coverage. Most people would probably choose to remain in FERS because of the unknown career future.

If you believe that, in the future, you will have a permanent appointment that would provide CSRS Offset coverage, then you need to compare the relative benefits of CSRS Offset and FERS. Your decision deserves careful thought, but remember no matter what you decide your Social Security coverage continues.

The enclosed FERS Transfer Handbook may help you choose. It contains an overview of both retirement systems, discusses the differences between FERS and CSRS, and provides examples. Please read it carefully before making your decision.

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**Sample Letter to Employee Who Was Erroneously Placed in FERS Rather Than Social Security Only (Continued)**

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Although the FERS Transfer Handbook provides a good comparison of CSRS and FERS, it was written for employees who are in the proper retirement system. There are a few things we want to point out before you make your decision. The enclosure, "Considerations in Choosing Between FERS and Social Security-Only Coverage," explains how the coverage error occurred. It also discusses how your decision will affect your benefits and provides additional information that should help you choose. All of the information in the enclosure applies to you, so consider the information carefully before making a choice.

We can help, too. We can provide a projection of your retirement benefit under FERS. We can also project your Social Security and TSP benefits, so you can compare your total benefits under FERS with Social Security alone.

Your Official Personnel Folder has been forwarded to your local Human Resources Office for their temporary use. [Joan Smith], your Benefits Officer, will be able to counsel you regarding Social Security, FERS, and CSRS Offset benefits, calculate benefits projections, and explain your potential benefits.

We included a copy of SF-3109, Election of Coverage, with the FERS Transfer Handbook. Please sign Part 1 of SF-3109. Your signature verifies that you received SF-3109 and the FERS Transfer Handbook. It is not an election of retirement coverage. If you decide that you want to remain in FERS, complete Part 2 of SF-3109, and return it to your Human Resources Office. Remember that if you choose to remain in FERS, you can't change your mind later; so you want to choose carefully.

We realize this error may cause you some concern, and we regret that. We want to make this as easy for you as we can. [Joan Smith] of your local Human Resources Office, extension [1234], is available to provide counseling and information to you about CSRS Offset and FERS, Social Security, and the Thrift Savings Plan, and to answer any questions you may have.

Please acknowledge receipt of this notice by returning a signed and dated copy of this letter, along with Part 1 of SF-3109.

Enclosure

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Signature

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Date

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**Sample Letter to Employee Who Was Erroneously Placed in FERS Rather Than Social Security Only (Continued)**

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**Note: To Agency Representatives:** You need to be able to document that you notified the employee of the coverage error and his or her options. Having the employee sign the receipt copy of the letter and SF-3109 is one way to accomplish this. However, you may use any method that accomplishes the purpose. See the CSRS and FERS Handbook for Personnel and Payroll Offices, Chapter 11, Section 11A6.1-1D for more information about the documentation requirement.

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**Sample Letter to Employee Who Was Erroneously Placed in FERS Rather Than Social Security Only (Continued)**

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**Considerations in Choosing Between  
FERS and Social Security-Only Coverage****How the Coverage Error Occurred**

This coverage error is the result of a recent decision of the U.S. Court of Appeals for the Federal Circuit in the case of *Conner v. U.S. Office of Personnel Management (OPM)*. The court ruled that OPM's regulations that tell agencies how to apply the 5-year test were incorrect. The 5-year test is used to determine whether employees who are subject to Social Security are automatically covered by FERS. If employees satisfy the 5-year test, they are not automatically covered by FERS, even though they may elect FERS coverage.

Because of the ruling in *Conner*, a new rule now applies. It states that an employee who performed 5 years of creditable civilian service before January 1, 1987, is excluded from automatic FERS coverage. This new rule revises the 5-year test. The revised 5-year test applies to all retirement coverage determinations made on or after January 1, 1987. It affects you because you had more than 5 years of civilian service before 1987.

Below is a summary of your employment history.

On \_\_\_\_\_, when you received a term appointment with us, we placed you in FERS. Based on the revised 5-year test, that retirement coverage is now wrong. You should have been placed under Social Security alone with the right to elect FERS.

**Personalized Earnings and Benefit Estimate Statement**

If you have a record of your Social Security earnings or an estimate of your Social Security benefits from the Social Security Administration, we can provide more realistic projections of your benefits. If you don't already have that information, you can request a Personalized Earnings and Benefit Estimate Statement from the Social Security Administration. [Joan Smith] can help you request one. You can also do it yourself by accessing the Social Security web site at [www.ssa.gov](http://www.ssa.gov).

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**Sample Letter to Employee Who Was Erroneously Placed in FERS Rather Than Social Security Only (Continued)**

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**Correction of Your Records**

If you elect to have your records corrected to only Social Security coverage, it will be made retroactive to \_\_\_\_\_. If you remain in FERS, the effective date of your FERS coverage \_\_\_\_\_ will not change, but your SF-50 showing your term appointment will be corrected to show that you elected FERS coverage effective \_\_\_\_\_, rather than being automatically placed in FERS on that date. This changes how your service, performed before \_\_\_\_\_, is treated.

If you choose to have your records corrected to Social Security only, the retirement money withheld from your pay and deposited into your account in the Civil Service Retirement and Disability Fund will be removed from your FERS account and returned to you. Since you have no retirement coverage, your FERS account will be closed out. The payroll office would take care of that. Your civilian service will not count toward a Federal retirement benefit, unless you are later covered by CSRS Offset or FERS.

In addition, your TSP account will be closed. If you choose to be covered by Social Security only, you are not, and should not have been, eligible to participate in the TSP. Consequently, we will ask the TSP to remove all contributions from your TSP account. We will refund your employee contributions to you, and these contributions are taxable as ordinary income for the year in which they are refunded. The earnings on your employee contributions will also be paid to you by the TSP. These earnings are also taxable as ordinary income for the year in which they are paid. You are not entitled to receive the Agency contributions or attributable earnings in your account.

**Health and Life Insurance Coverage**

You will keep your Federal health benefits and life insurance coverage if you are currently enrolled.

**Service Credited Under CSRS Rules Even If You Remain Under FERS**

If you remain in FERS, your civilian service before April 1, 1994, is credited under CSRS rules. That's because as a FERS Transferee, rather than someone automatically placed in FERS, your FERS annuity will have a CSRS component. The "Service Credit Deposits and Refunds" section in the FERS Transfer Handbook explains how civilian service is credited under CSRS when no retirement deductions were withheld from your salary. Your service before October 1, 1982, is treated differently from your service on and after October 1, 1982. All of the service counts in deciding whether you have enough service to be eligible to retire, but the service on and after

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**Sample Letter to Employee Who Was Erroneously Placed in FERS Rather Than Social Security Only (Continued)**

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October 1, 1982, can be used to compute your retirement benefit only if you pay a deposit for the service. The service before October 1, 1982, is used to compute your retirement benefit even if a deposit is not paid for the service, but your annuity is reduced if the deposit is not paid.

The deposit under CSRS is 7 percent of your earnings during the period when no deductions were withheld, plus interest. That's different from a FERS deposit which is 1.3 percent of your earnings. If you already paid a FERS deposit for the service, let us know. You will owe additional money. We will contact the OPM, so they can compute a CSRS deposit and give you credit for the deposit amount already paid. You also can choose to have the money you already paid returned to you.

**Social Security Benefits Are Not Affected by Your Decision**

The FERS Transfer Handbook discusses the Government Pension Offset and Windfall Elimination Formula. Both can affect the amount of Social Security benefits payable to certain Federal employees. The Government Pension Offset affects a spouse's share of a worker's Social Security benefit while the worker is living and the survivor benefit after the worker dies. If you expect to be eligible for spouse and survivor benefits from Social Security, we want you to know that you do not need to consider the Government Pension Offset when making your decision. Because you are automatically covered by Social Security, neither the Social Security spouse benefit nor the survivor benefit will be subject to the Government Pension Offset under either CSRS Offset or FERS coverage.

If you have always had Social Security deducted from your pay during your employment both inside and outside of the government, your Social Security benefit will not be subject to the Windfall Elimination Formula. This is true under both CSRS Offset and FERS coverage.

**Effect on Your Thrift Account**

You have been contributing 5 percent of your pay to your Thrift Savings Plan account and receiving the Agency automatic (1 percent) and Agency matching contributions. You became eligible to participate in the TSP on [insert date]. However, as a FERS Transfer employee, you would have become eligible to participate in the TSP on [insert effective date of deemed FERS election]. Consequently, if you elect to remain in FERS, you are entitled to retroactive Agency automatic (1 percent) contributions for the period [insert effective date of deemed FERS election] to [insert date employee became eligible to participate in the TSP]. You will also have the opportunity to make up employee contributions missed during this period. If you make up employee contributions, you will receive associated retroactive Agency matching contributions. In addition, you are entitled to lost earnings on the retroactive Agency contributions that are made to your account. Please contact \_\_\_\_\_ for additional information and assistance.